No. 9480.

IN THE

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

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FRANCIS A. HOWARD,

*Appellant,*

*vs.*

E. H. ARCHER, THE HOWARD-VAUGHAN CO., INC., a corporation; HOWARD F. ZAHNO, also known as FRANCIS Z. HOWARD; JAMES H. MOYER, MARY M. VAUGHAN, JAMES WESTERVELT, CHARLES S. MACKENZIE, THOMAS MIDGLEY, JR., JAMES I. BOWERS, M. J. CRONIN and CHARLES LEVY,

*Appellees.*

## REPLY BRIEF OF APPELLANT.

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## REPLY BRIEF OF APPELLANT.

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Counsel for appellees in their preliminary statement lay stress that appellant's complaint is filed *in propria persona* and counsel the usual difficulties which occur when a layman attempts to draw his own pleadings, and fails to add that the procedure of the above matter before the District Court below is in equity, and that a substitution of counsel for appellant shows in the record, and also an application by counsel to amend bill in the form of a motion to amend and a petition to amend the bill of complaint in equity, which was denied by the District Court below, and since equity is supreme to law

for the purpose of leveling off the inequalities of the law. for the sole purpose of protecting appellant against the thing counsel for appellees lay stress upon, namely, a layman writing his own pleadings, and the supremacy of equity over law is well established; and equity will allow a layman the privilege of counsel to correct.

*Bennett v. Butterworth,* 11 How. (U. S.) 669, 31 L. Ed. 859.

See:

*Cook, Powers of Courts of Equity,* 15 Columbia Law Review 235-238 (1915).

And to deny an application to amend a bill of complaint in equity and file a proposed amended bill is a denial of due process of law and a reversible error, and such denial has been reversed and the cause remanded with directions for further proceedings:

*United States v. Lehigh Valley R. R. Co.,* 220 U. S. 287.

and if a layman files his own pleadings and makes a mistake, a mistake is not beyond the reach of equity for relief, as in the case of (6 Wheat. 174, 5 L. Ed. 589) the Supreme Court said:

> "He had found no case in the books in which it has been decided that a plain and acknowledged mistake of law was beyond the reach of equity,"

and equity will correct the mistake:

*Hunt v. Adm'rs,* 1 Pet. 13 (U. S.),

and no one is allowed to enrich himself by a mistake at law or of fact:

*Benson v. Bunting,* 127 Cal. 532, 59 P. 991, 78 Am. S. R. 81,

and fraud is alleged in bill of complaint in equity, and equity has jurisdiction to relieve in all cases of fraud:

*Tyler v. Savage,* 143 U. S. 79 (12 Sup. Ct. 340), 36 L. Ed. 82.

Counsel for appellees, in their argument relative to the points to be considered, overlooked important facts as follows:

(1) The federal question involved for jurisdiction is, that the record shows that appellee Thomas Midgley, Jr., on February 23, 1926, was granted a patent known as patent No. 1,573,846, which is an infringement, interference and fraud against appellant in his discovery, invention, conception and reduction to practice, for the use of tetraethyl lead in gasoline for the beneficial purposes as set forth in the record, and the fraud surrounding the matter as set forth in the record is a federal question:

*U. S. C.,* Title 35, Sec. 67 (Patents);
*U. S. C.,* Title 35, Sec. 71 (Patents).

(2) Relative to diversity of citizenship, Howard-Vaughan Co., Inc., a corporation, is a corporation of the State of New York.

(3) Relative to a state judgment of Court of Chancery of New Jersey, and complaint barred by *res adjudicata,*

the record in complaint relative to this matter shows fraud and inadvertence, and the question of a state judgment obtained in such manner has been enjoined by federal court, and is settled in cases as follows:

*Hilton v. Guyot,* 159 U. S. 113, 207, 40 L. Ed. 95, 123 (16 Sup. Ct. Rep. 139);

*C. R. I. & P. Ry. Co. v. Callicotte,* 267 Fed. 799, 16 A. L. R. 386, 395, 396;

*Marshall v. Holmes,* 141 U. S. 589, 35 L. Ed. 870;

*Colby v. Title Ins. & Trust Co.,* 160 Cal. 632, 641, 643.

## Conclusion.

Wherefore, appellant respectfully submits the record, brief, reply brief, and all papers in the files of the above-entitled matter, and prays that the judgment of the District Court below be reversed and that the matter be remanded to the District Court for further proceedings with the filing of the proposed amended bill of complaint in equity.

Dated: Los Angeles, California, June 6, 1940.

Respectfully submitted,

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